

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PHELPS AUTOBROKERS, LLC,)	
)	No. 62138-6-I
Respondent,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
BRIAN WILLIAM DAVIES, and JANE)	
DOE DAVIES, husband and wife,)	
)	
Appellants,)	
)	
CAROLYN KO; MMK, LLC; TIBUKI)	
MANAGEMENT SYSTEMS; and JOHN)	
DOE, a recovery company or individual)	
and agent of appellant Brian Davies,)	
)	
Defendants.)	FILED: July 6, 2009

Appelwick, J. — The trial court declared that Phelps is the legal owner of a 2003 Jaguar purchased in California. Davies perfected title to the vehicle in California after Phelps acquired possession. Phelps's attempt to take title was ineffective under California law. We reverse.

FACTS

The State of California issued a certificate of title for a 2003 Jaguar to

Carolyn Ko on August 30, 2006. At the time the title was issued, Ko was married to Brian Davies. Their marriage was nullified on November 29, 2006. On January 16, 2007, a California court ordered Ko to transfer title to the Jaguar into both parties' names. The property, however, remained uncharacterized as separate, community, or otherwise. Ko did not transfer the title into both parties' names.

Ko released her interest in the Jaguar on April 8, 2007. Phelps Autobrokers, LLC, a Washington car dealership, claims it bought the Jaguar from Ko. Phelps is not a licensed California car dealer, and therefore is prohibited from purchasing or selling vehicles as a dealer from or to consumers in California.

On May 19, 2007, Phelps sold the Jaguar to David Eaton, a resident of Mukilteo, Washington. On August 22, 2007, Eaton obtained a vehicle title and registration certificate from the Washington Department of Licensing.

An amended nullity judgment was filed on October 29, 2007, awarding Davies sole and separate ownership of three cars, including the 2003 Jaguar. Pursuant to this judgment, the State of California issued a certificate of title for the Jaguar to Davies. On December 11, 2007, the Washington Department of Licensing sent a letter to Eaton explaining that his certificate of ownership would be cancelled in 15 days, because Davies possessed a more current title. Eaton could prevent the cancellation by providing evidence of a release of ownership from Davies or a court order. On March 15, 2008, Eaton transferred the Jaguar

back to Phelps.

Phelps filed a complaint seeking a declaratory judgment stating that it was a bona fide purchaser of the Jaguar, and is therefore the lawful owner of the vehicle. The trial court entered an order to show cause. On April 24, 2008, Phelps filed a memorandum of authorities regarding plaintiff's motion to show cause. On May 14, the trial court ruled on the motion to show cause, finding that on April 8, 2007, Ko, the registered owner, sold the Jaguar to Phelps. The trial court found: that Davies's interest, if any, in the Jaguar arose after the sale of the Jaguar to Phelps; Phelps's interest was therefore superior to Davies's interest; and that Davies's interest was at best voidable. Davies sought reconsideration, which the trial court denied.

On June 19, 2008, Davies filed a motion to dismiss. On July 3, 2008, Phelps filed a cross motion in opposition to defendant Davies's motion to dismiss.

On July 14, 2008, the trial court issued an order pertaining to Davies's motion to dismiss and Phelps's cross motion and judgment. The court awarded all right, title, and interest in the Jaguar to Phelps. The judgment required Davies to surrender his California Certificate of Property, endorsed by him, and indicating that he releases any and all interest in the vehicle (as the registered and legal owner) to Phelps. Davies appeals.

DISCUSSION

In the context of appellate review of a declaratory action under RCW

7.24.070, “[a]ll orders, judgments and decrees under this chapter may be reviewed as other orders, judgments and decrees.”

Davies argues that the trial court erred, because his California title is superior to any interest Phelps holds. Davies argues that under California law, Ko did not sell her interest in the Jaguar, because Phelps failed to perfect title under California law.

The transfer of title to a vehicle registered in California is accomplished under Cal. Veh. Code § 5600 (2001):

(a) No transfer of the title or any interest in or to a vehicle registered under this code shall pass, and any attempted transfer shall not be effective, until the parties thereto have fulfilled either of the following requirements:

(1) The transferor has made proper endorsement and delivery of the certificate of ownership to the transferee . . . and the transferee has delivered to the department . . . the certificate

(2) The transferor has delivered to the department . . . the appropriate documents for the registration or transfer of registration of the vehicle

Generally, a purported transfer of title or interest, other than an involuntary or security transfer, which fails to comply with the requirements of Cal. Veh. Code § 5600 (2001) is ineffective. In re Guillory, 285 B.R. 307, 314 n.4 (C.D. Cal. 2002); see also Quartz of S. Cal., Inc. v. Mullen Bros., Inc., 151 Cal. App. 4th 901, 908, 61 Cal. Rptr. 3d 54 (2007). Lack of compliance may render the sale void. Guillory, 285 B.R. at 314 n.4; See also Dennis v. Bank of Am. Nat’l Trust & Sav. Ass’n, 34 Cal. App. 2d 618, 623, 94 P.2d 51 (Cal. Dist. Ct. App. 1939).

The trial court made no findings of fact regarding whether Phelps

perfected its title nor whether title passed to the buyer by estoppel. Phelps, though, concedes that it did not register the title with California, but asserts such a registration was not needed, because it is a car dealer and thus exempt from the vehicle registration code.¹ The record does not support Phelps's characterization of the facts, because it is not a California automobile dealer.

The California Department of Motor Vehicles sent Phelps a letter stating:

California Vehicle Code (CVC) 11700 requires that individuals involved in the acquisition and re-sale of motor vehicles for profit first obtain an occupational license issued by the Department of Motor Vehicles. . . .

Information in our possession revealed that you purchased a vehicle in California from a California consumer without benefit of a California vehicle dealer license.

. . .

If you are engaged in purchasing or selling vehicles to consumers in California you are behaving as an unlicensed car dealer . . . subject to criminal prosecution under California Vehicle Section 11700.

Phelps does not challenge this characterization of his activities in California.

Although California law, Cal. Veh. Code § 5906 (2009), recognizes an exception to the vehicle registration code for dealers, Phelps cannot benefit from this exception, because under California law it is not authorized to conduct such transactions.²

Based on the record and briefing before this court, Phelps never

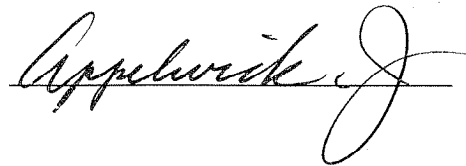
¹ This court offered Phelps the opportunity to provide supplemental briefing on the California law issues. Phelps however submitted no supplemental briefing.

² Cal. Veh. Code § 5906 (2009) states:

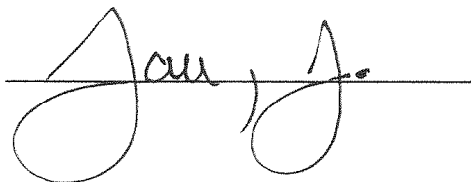
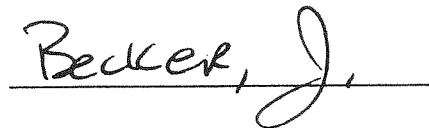
When the transferee of a vehicle is a dealer who holds the same for resale and operates or moves the same upon the highways under special plates, the dealer is not required to make application for transfer, but upon transferring his title or interest to another person he shall comply with this division.

transferred the certificate of title or other appropriate documents for the registration or transfer of registration of the vehicle to the California Department of Licensing, as required by Cal. Veh. Code § 5600 (2001). Based on the strict interpretation of the vehicle code employed generally by California courts and applied to such vehicle sales, no title or any interest passed from Ko to Phelps without the registration. In contrast, the California court awarded Davies a joint ownership interest in the vehicle in January 2007 and sole and separate ownership of the Jaguar in October 2007, which he perfected by obtaining a certificate of title from the California Department of Licensing. The trial court erred in awarding ownership to Phelps. We need not reach the merits of Davies's other claimed errors.

Reversed.

A handwritten signature in cursive script, reading "Appelwick, J.", written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, reading "Jan, J.", written over a horizontal line.A handwritten signature in cursive script, reading "Becker, J.", written over a horizontal line.